IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15406 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TARABEN D/O MANGALBHAI CHUNILAL KAHAR - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 19/09/2005

ORAL JUDGMENT

1.The order of detention dated 19.07.2005 passed

by the Police Commissioner, Vadodara City, respondent No.2 herein in exercise of power under Sub-Section(2) of Section 3 of Prevention of Anti- Social Activities Act, 1985 (for short PASA) on the ground that the order of detention is illegal and unconstitutional and violative of Articles 14, 21 and 22 of the Constitution of India being illegal and unconstitutional required to be quashed and set aside.

2.The order of detention 19.07.2005 alongwith the grounds of detention contained therein reflect, Registration of C.R. Nos. 372 of 2003 dated 8.12.2003, 490 of 2003 dated 31.12.2003, 188 of 2004 dated 2.06.2004, 341 of 2004 dated 4.10.2004 and 315 of 2005 dated 14.07.2005 registered with Raopura Police Station under the provision of Sections 66(b), 65(e) and 81 of the Bombay Prohibition Act, 1949 are not sufficient and, therefore, to contain the activities of the detenue and to prevent him

from indulging into some criminal and antisocial activities in future, the powers are exercised under the said Act.

According to the Detaining Authority, the above mentioned materials, are sufficient enough to attract the provisions of Sub-Section 2 of Section 3 branding the petitioner as a bootlegger as define under Section 2B of the Act, since the remedies under Section 93 of the Bombay Prohibition Act, 1949 and Section 57 of the Bombay Police Act, 1951 are not sufficient to contain the activities of the detenue, which are prejudicial to the public order and general health of the public.

3. The learned advocate for the detenue, at the outset, has relied upon the order passed in the case of co-detenue dated 18.08.2005 passed

in Special Civil Application No.11733 of 2005 in the case of **Balkarsing @ Shamshersing S/o. Bhalsing Jat (Chaudhry) Vs State of Gujarat and others.** The learned advocate for the detenue has submitted that alleged antisocial activities cannot be said to have bearing on the maintenance of the public order or the general health of the public and simply a crime is registered, it cannot form a relevant material for arriving at the subjective satisfaction by the Detaining Authority that though the petitioner is a bootlegger, required to be detained under the provisions of the Act.

4. Mrs. Hansha B. Punani, learned Assistant Government Pleader has tried to support the order of detention but could not dispute the release of co detenue by this court vide order dated 18.08.2005 as stated in the earlier para.

5. Considering the facts and rival submissions

and on perusal of the records of the case and the order dated 18.08.2005 passed in Special Civil Application No.11733 of 2005, I am inclined to accept the submissions of learned advocate for the detenue that registration of crimes for the offences punishable under the Bombay Prohibition Act by itself cannot said to have bearing or nexus on the disturbance of the public order or the general health of the public and, therefore, the decision reported in the case of **Darpan Kumar Sharma Vs. State of T.N.,** reported in 2003 (2) SCC 313, particularly para-5 which reads as under:-

> “5. The basis upon which the petitioner has been detained in the instant case is that he robbed one Kumar at the point of knife a sum of Rs.1,000. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound to some extent, affect the peace

> prevailing in the locality and it may also affect law and order, but the same need not affect maintenance of public order. Under the definitions in the Act, it is stated that in the case of "goonda" the acts prejudicial to public order are "when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order"

The important question considered by the Supreme Court " whether a man has only committed a breach of law and order or has acted in a manner likely to cause disturbance of the public order" is very well explained in the decision reported in 2000 (4) GLR 3623 in the case of **Amanulla Khan Kudeatalla Khan Pathan Vs. State of Gujarat and Ors.** as under:-

> " Even an activity violating an ordinary legal provision may in a given case be a matter of public order. It is the magnitude of the activities and its effect on the even tempo of life of the society at large or with a section of society that determines whether the activities can be said to be prejudicial to the maintenance of public order or the same amounted to breach of law and order. The fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society."

6. The above circumstances and the judgments are clearly applicable in the present case, the order of detention is to be quashed and set

aside as the same is unjust, unconstitutional, illegal and violative of Article 21 and 22 of the Constitution of India.

That the Apex Court has also considered the aspects of “Law and Order” and “Public Order” and effect of the incidence on even tempo of public life.

The decision reported in L.P.A. 223 OF 2000 in Special Civil Application No.554 of 2000 wherein in Para- 5 of the said judgment law laid down by the Apex Court in case of K.S.Zala Vs State of Gujarat is discussed is as under:-

> PARA-5:- If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra), i.e. with regard to the presence of credible material and

as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is , of course, true that after narrating the authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the

judgment can be read in isolation and bereft the context. The judgment is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgment are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order, material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that

members of the public of those localities had to run away from there and to go inside their houses and to close their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter unregistered cases and with regard to the three incidents the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material

for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by

any credible material has simply observed that the appellant's activities were on obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala Vs. State of Gujarat (Supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the

facts of the case by the body of the order itself , which does not require further investigation of the facts can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set aside on this ground alone. We therefore, do not go into other grounds which were raised on behalf of the appellants."

7.For the reasons recorded hereinabove, the order of detention dated 19.07.2005 is hereby ordered to be quashed and set aside and the

detenue Smt. Taraben D/O Mangalbhai Chunilal Kahar is ordered to be set at liberty forthwith if not required in any other offence by any other authority.

8.Rule is made absolute with no order as to costs. Direct Service is permitted.

(A.S.DAVE,J.)

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